

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case NO. 18-CV-00561 KK-LF

\$68,790.00 in U.S. currency,  
Defendant.

HEATHER STEWART,

Claimant.

**ANSWER OF CLAIMANT HEATHER STEWART TO PLAINTIFF'S FIRST  
VERIFIED COMPLAINT FOR FORFEITURE *IN REM***

COMES NOW, Claimant, Heather Stewart, by and through her counsel of record,  
Erlinda O. Johnson, of The Law Office of Erlinda Ocampo Johnson, LLC, and  
respectfully files her original answer to the First Verified Complaint for Forfeiture *In  
Rem* ("the Complaint").

**I. PARTIES**

The respondent and claimant is:

Heather Stewart  
6330 Salter Ave.  
Temple City, CA. 91780

**II. ANSWER AS TO ALLEGATIONS IN THE FIRST VERIFIED COMPLAINT FOR FORFEITURE IN REM**

In Answer to, and for her affirmative defenses in response to the Complaint filed in this matter, Heather Stewart hereby states as follows:

1. As to the allegations of paragraph 1 of the First Complaint, Heather Stewart states that said paragraph contains conclusions of law to which no response is required. To the extent that Paragraph 1 may be read to make allegations of fact, those allegations are denied.

2. As to the allegations of paragraph 2, 2i and 2ii of the First Complaint, Heather Stewart has insufficient information to either admit or deny the allegations alleged in this paragraph and therefore denies these paragraphs.

3. As to the allegations of paragraph 3 of the First Complaint, Heather Stewart has insufficient information to either admit or deny the allegations alleged in this paragraph and therefore denies this paragraph.

4. As to the allegations of paragraph 4 of the First Complaint, Heather Stewart has insufficient information to either admit or deny the allegations alleged in this paragraph and therefore denies this paragraph.

5. As to the allegations of paragraph 5 of the First Complaint, Heather Stewart admits this Court's jurisdiction over the property as alleged in this paragraph.

6. As to the allegations of paragraphs 6 of the First Complaint, upon information and belief, Heather Stewart admits these allegations.

7. As to the allegations of paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 of the First Complaint, Heather Stewart has insufficient knowledge or information to form a belief as to the truth or falsity of the allegations of these paragraphs, and accordingly, Heather Stewart denies them at this time, demanding strict proof of same, and reserving the right to amend these denials to conform to evidence that may be discovered during the course of this proceeding.

8. Claimant Heather Stewart affirmatively denies the allegations contained in paragraphs 24, 25, 26, 27, 28, 29, and 30 of the First Complaint.

9. As to the allegations to any paragraph of the Complaint not specifically admitted above, Heather Stewart reserves the right to amend any answer provided to conform to after-acquired evidence or the facts as they may emerge.

### **III. AFFIRMATIVE DEFENSES TO FIRST COMPLAINT FOR FORFEITURE IN REM**

As affirmative defenses, under the facts and law as they are presently known by the Claimant, Heather Stewart respectfully asserts the following affirmative defenses in opposition to the Plaintiff's claims for relief:

1. The Plaintiff may not have standing to assert the claims sought in this matter based on allegations of the Complaint. This Affirmative Defense is raised so as to prevent waiver.
2. The Plaintiff's claims may be barred, in whole or in part, by the doctrines of Estoppel. These defenses are raised so as to prevent waiver.

3. The Claimant constitutes innocent owner or holder of legal rights secured by the properties at issue in this action and is innocent contemporaneous owner as that term is defined under 18 U.S.C. § 983(d)(2)(A). These defenses are raised so as to prevent waiver.

4. The Claimant has a Fifth Amendment privilege against self-incrimination. This defense is raised so as to prevent waiver.

5. The Claimant raises the defense of Laches.

6. The Claimant alleges that her rights pursuant to the Fourth Amendment of the United States Constitution to be free from illegal searches and seizures were violated and therefore any evidence seized or garnered thereby should be suppressed prior to the trial in this matter.

7. The Claimant raises the defense pursuant to the unclean hands doctrine.

8. Claimant alleges that various of her Constitutional rights pursuant to the Fifth and Sixth Amendments to the United States Constitution were violated and therefore any evidence seized or garnered thereby should be suppressed prior to the trial in this matter.

9. Claimant raises the defense of waiver.

10. Claimant alleges that the arrest and forfeiture of the Defendant to Plaintiff would violate the Eighth Amendment to the United States Constitution.

11. Claimant acted in good faith at all times relevant to the complaint.

12. The Claimant respectfully reserves the right to amend this Answer and include additional affirmative defenses and/or claims that may be warranted under the facts as the investigation progresses during the course of this litigation.

13. Claimant should be awarded attorney fees in this matter pursuant to the Equal Access to Justice Act in that the Complaint filed herein is frivolous and without substantial basis in fact or in law.

14. Claimant requests that all issues so triable be tried by a jury.

WHEREFORE, having fully answered the Complaint, Claimant Heather Stewart respectfully prays that this Court dismiss the Plaintiff's Complaint, award them her costs in this matter, and grant such other and further relief as the Court deems proper under the circumstances.

Respectfully submitted,  
**LAW OFFICE OF ERLINDA O. JOHNSON, LLC**

Electronically filed 7/31/18  
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Counsel for Claimant Heather Stewart

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this pleading has been delivered this 31st day of July, 2018 via the Court's CM/ECF system following its filing, as well as copies transmitted by first class mail to:

Mr. Steve Kotz  
Assistant U.S. Attorney  
P.O. Box 607  
201 Third Street NW  
Suite 900  
Albuquerque, NM 87103

/s \_\_\_\_\_  
Erlinda O. Johnson, Esq.